

ETUI Policy Brief

European Economic, Employment and Social Policy

N° 6/2014

Varieties of social dumping in an open labour market: the Irish experience of large-scale immigration and the regulation of employment standards

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Policy recommendations

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Following the 2004 EU enlargement, large numbers of migrants from the new EU member states were integrated into the Irish labour market. While immigration did not lead to major displacement of the native working population, it did make it easier for employers to pursue social dumping practices, thereby contributing to the informalisation and casualisation of work in some employment sectors. Although Ireland was hit by a recession in 2008, migrants continue to represent a substantial part of the workforce. To prevent labour market segmentation along ethnic lines, the integration of migrants in the workplace and in wider society should be based on the principle of equal treatment

and employment rights. Increased compliance with labour standards coupled with greater investment in human capital offers a more sustainable path to economic recovery than reliance on low wages and social dumping.

Introduction¹

In the context of an open labour market and an unprecedented economic boom, Ireland attracted large-scale migration from the new EU member states (NMS). After EU enlargement in 2004 more than half a million citizens from the NMS, two thirds of them from Poland, arrived in the country. In 2007, at the height of the boom, immigrants accounted for almost 16 per cent of the Irish workforce. Arguably, in the final years of the boom, employment growth was largely driven by mass migration from the NMS. As can be seen from Figure 1, employment peaked in 2007 and has since then declined in the context of a sharp recession that hit Ireland in 2008. While this immigration contributed to economic growth during the boom years, it also raised concerns about labour standards and a 'race to the bottom'.

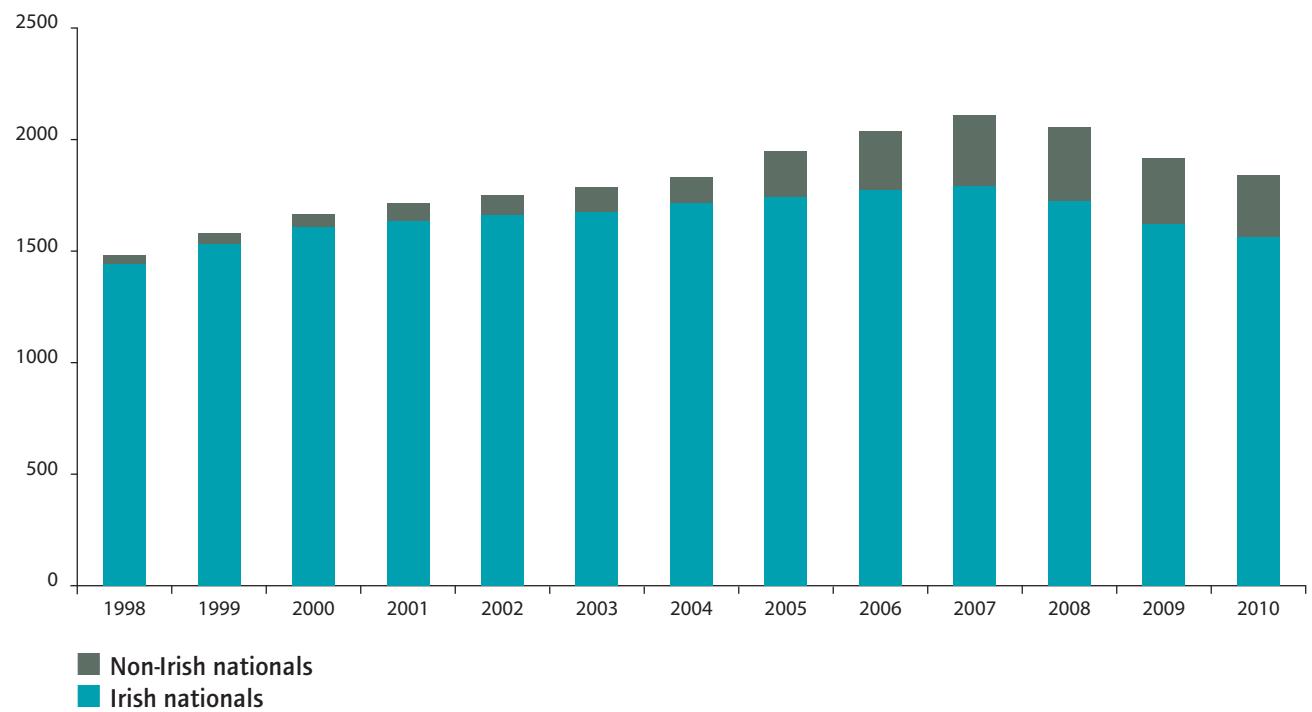
This policy brief examines the impact of recent immigration on employment conditions in two sectors, namely, construction and hospitality. It shows that employers have frequently engaged in practices of social dumping, understood as 'the practice (...) of undermining or evading existing social regulations with the aim of gaining a competitive advantage' (Bernaciak 2014). These practices, however, differed, depending upon the regulatory environment and the role of unions in each sector. In

construction, where unions are a powerful force, social dumping has mainly involved the breach of collective agreements through subcontracting arrangements at the more informal fringes of the sector. In hospitality, by now largely de-unionised and characterised by an informal work culture, social dumping is often synonymous with non-compliance with existing employment regulations.

More generally, both sectors have experienced growing casualisation of employment. While this was primarily an employer-driven strategy, immigrants did not necessarily perceive

¹ This Policy Brief is based on a 4-year research project on Polish migration that was carried out at Trinity College Dublin. For more information see www.tcd.ie/immigration/careers

Figure 1 Total employment of Irish and non-Irish nationals aged 15 years and over (in 000s)



Source: European Labour Force Survey, EUROSTAT.

the casualised employment relationship as a disadvantage, especially when the job was seen as merely transitional and comparisons were made with conditions in their home country. However, the longer these workers stayed in Ireland, the more assertive they became about their employment rights, sometimes assisted by the unions. Whereas some migrants were able to negotiate better working conditions during the boom years, the recession fundamentally altered the labour market situation, with employers increasingly demanding flexible working practices. Before assessing the implications of this situation, this policy brief presents two case studies from the construction and the hospitality sectors, both of which have been major destinations for NMS migrants.

Subcontracting and agency labour in the construction sector

In the first decade of the twenty-first century, Ireland experienced an unprecedented construction boom. Its main driving force was the expansion of domestic credit leading to rapidly rising asset prices – a classic property bubble. As the sector underwent rapid expansion, employment skyrocketed, rising between the second quarter of 2002 and 2007 from 170,000 to 270,000 (CSO 2013). After 2004, and in view of Ireland's open labour market, much of this increase stemmed from immigration, especially from Poland, a factor which arguably contributed to sustaining the construction boom. Employment of Irish nationals also increased in those years, suggesting that migrant inflows were largely complementary to developments within the domestic workforce.

The Irish construction sector is governed by industry-wide collective agreements known as Registered Employment Agreements that are negotiated between employer bodies and trade unions. While union density in the sector declined from 47 to 27 per cent between 1994 and 2004 (QNHS 2005), unions nonetheless remain an important player in this industry and, to a considerable extent, are able to enforce the agreements. However, at the fringes of the sector informal employment is more widespread. This is linked to some broader structural changes in the industry. During the last two decades large firms have been turned into 'management firms' (Veiga 1999, in Schierup *et al.* 2006: 239) which increasingly outsource individual tasks of the work process to smaller firms to save on costs and increase flexibility. Hence the number of manual workers directly employed by these 'management firms' has diminished. Whereas these firms retain a core of direct employees with specialist knowledge who cannot easily be replaced, manual labour is increasingly sourced from subcontractors and recruitment agencies as the work process has become more fragmented.

This 'division of labour' has important implications for migrant labour. For many migrants, the main route into employment was through subcontractors and recruitment agencies (Krings *et al.* 2011). Although subcontractors are formally bound by the Registered Employment Agreements, further down the subcontracting chain the sector is less regulated and social dumping practices are more widespread. Initially, indeed, it sometimes appeared as if non-compliance with employment standards were part of the 'bargain of convenience' between

migrants and employers. For some of the former, a salary just below the official rates in Ireland still appeared as reasonably good money, especially if comparisons were made with Poland. However, the longer these workers stayed in the country, the more assertive they became about their employment rights. A greater insistence upon employment rights was likely to be assisted by the fact that, as EU citizens, Poles and other NMS migrants have the same labour market rights as Irish nationals. Furthermore, the role of unions in the sector was of considerable importance. In particular the Services, Industrial, Professional and Technical Union (SIPTU), Ireland's largest union, had raised the issue of employment rights among the migrant construction workforce through various information campaigns and a number of newly appointed Central-Eastern European organisers (Krings 2007). Indeed, in construction, where SIPTU was particularly active through its new organisers, NMS migrants had a membership level of 17 per cent that was well above their average union density level of 10 per cent. This suggests that union presence at the workplace is, in conjunction with duration of stay, the crucial variable in accounting for differences in unionisation among immigrants.

During the boom years, immigrants viewed casual employment as less problematic since there were plenty of job opportunities and they were able, in some cases, to negotiate better working conditions. However, the 2008 downturn dramatically changed the situation as employment sharply declined in the sector. While both Irish and non-Irish workers have been affected by this decline, the latter have been worse hit: employment of NMS migrants declined by three quarters between 2008 and 2012 (CSO 2013). For those who remained in employment, work became more intense, especially at the informal fringes of the sector. Moreover, the crisis exerted downward pressure on wages as the bargaining position of employers increased.

In their quest for greater flexibility some employers even began to challenge the system of industry-wide wage agreements. In May 2013 a group of electrical contractors succeeded in legally challenging the system of Registered Employment Agreements which was declared 'unconstitutional' by the Supreme Court (Burke-Kennedy 2013). At the time of writing (May 2014) the implications of this ruling are still unclear. So far most construction firms appear to be adhering to the collective agreements. One likely reason is the role of unions in the sector; in spite of the recession, they remain a powerful force and have made it clear that they would not accept any deviation from existing agreements. Further, employers may still have an interest in retaining a system of basic wage rates to avoid a 'race to the bottom' in which they would face cost competition with domestic and foreign service-providers. Hence the main employer body, the Construction Industry Federation (CIF), has so far not advocated abolishing the Registered Employment Agreements but has instead pushed for a reduction of rates (Farrelly 2011). Thus, while employers might demand further wage cuts and utilise more precarious work arrangements in the future, it appears unlikely that the sector will be completely deregulated.

Informality and casual work in the hospitality sector

The hospitality sector in Ireland, as in many other countries, has traditionally been a low-wage sector with comparatively low trade union density and a relatively large share of less-skilled occupations. Collective bargaining is largely absent although until recently a Joint Labour Committee comprising employers and worker representatives set the terms and conditions of employment in a number of sectors, including catering and hotels. Much of the work in hospitality is casual and seasonal, often involving long working hours and atypical work arrangements (Wickham *et al.* 2009). Since the 1990s, employment in the sector has almost doubled in line with the tremendous increase in the numbers of hotels, restaurants, fast food outlets and coffee shops.

After 2004 and given Ireland's open labour market, the employment structure of the sector changed. Whereas the share of Irish employees somewhat declined, the share of migrant employment substantially increased. This raises the question of whether Irish nationals have been displaced by immigrants. The most likely scenario is that Irish nationals were replaced and possibly moved into better jobs during the boom years as overall unemployment did not increase. Interestingly, however, since 2008 and the recession, the number of Irish employees has increased in hospitality which suggests that at least some Irish nationals are returning to jobs that during the previous period would have been regarded as 'immigrant jobs'.

Although casual work was always a feature of the sector, there is little doubt that the rapid expansion of low-wage jobs reinforced a trend towards casualisation and informalisation. As many new employees had a short-term orientation towards work, there was a high job turnover as 'the workplace (was) not governed by any strong set of accepted social rules and the customary practices that govern established jobs (were) substantially absent' (Wickham *et al.* 2009: 88). Many immigrants, in pursuit of short-term economic gains, initially took on hospitality jobs that fell below their level of qualification.

Employers were well aware that many immigrants had a different orientation to work than Irish workers: a 'bad job' in Ireland may not appear so 'bad' if the point of comparison is a job in Poland. Whereas initially employers hired migrants because of labour shortages, they soon began to see them as a more hard-working and acquiescent workforce. It might thus be only a small step from hiring migrants because they were available to fill vacancies to actually preferring them, especially in times of ample supply of additional labour from abroad and in a deregulated work environment.

Between 1994 and 2004, union density in the hospitality sector had declined from 21 to 10 per cent. In other words, the decline preceded the arrival of large-scale immigration from Poland and other NMS. As a result, immigrants usually entered a union-free workplace and consequently had low levels of unionisation. In contrast, there was a relatively broad awareness of the statutory National Minimum Wage among immigrants. Indeed, our

research suggests that immigrants were at times quite assertive about this entitlement which is likely to reflect the fact that as 'free movers' (Favell 2008) they were less dependent on a single employer. Thus, the minimum wage appeared as a relatively effective threshold in low-wage sectors such as hospitality that received a huge inflow of immigrants and where trade unions no longer possess the organisational strength to prevent a 'race to the bottom'.

Unlike the construction sector, the hospitality sector did not experience large-scale job losses in the 2008 recession. However, there was a growing preference among management for more flexible work arrangements, including part-time work. Indeed, it sometimes appeared as if the recession provided employers with a pretext to push through the organisational changes to which they had long aspired. While such practices do not constitute a formal breach of labour market regulations, they represent attempts by employers to push for ever more 'flexibility' and thereby to undermine the existing regulatory environment (Bernaciak 2014).

This trend towards more flexible work arrangements is likely to become even more pronounced in the light of a recent High Court ruling which declared Joint Labour Committees to be 'unconstitutional' (Wall 2011). This case was brought by a group of fast food businesses with the tacit backing of larger employer groups such as the Irish Hotels Federation and the Restaurant Association of Ireland. The implications of this ruling are at present still unclear. More recently, the Irish government announced that it is about to reform the JLC system, much to the displeasure of employer organisations which would have preferred outright abolition of the system (Wall 2013). Thus, as unions no longer wield much influence in hospitality, the Irish government – which includes the Labour Party – appears to be jumping in to prevent a lowering of social standards as employers pursue a more confrontational approach in a dramatically changed business environment.

Conclusion

The recession fundamentally transformed the labour market situation in Ireland. Not only has unemployment risen sharply, but the distinctive Irish system of social partnership was brought to an end as the government, employer associations and the Irish trade union movement increasingly diverged in their analysis of, and prescriptions on how to remedy, the country's dire economic situation (Doherty 2011). While it appears unlikely that Ireland will experience full-scale labour market deregulation, it seems to be moving towards a more liberal system of employment relations.

2 Research by the Migrant Rights Centre Ireland found that the single largest reason why restaurant workers from outside of the European Economic Area did not make a complaint about employment rights violations were concerns about the job and the renewal of their work permit (MRCI 2008).

So far there is no conclusive evidence to suggest that recent immigration negatively impacted upon the employment opportunities of domestic workers in Ireland. However, as outlined in this policy brief, employers frequently engaged in social dumping practices during the boom years, and there are already signs that this trend has become more pronounced in the recession. Especially in times of economic crisis, it may be tempting for firms to resort to dumping practices in order to save on costs. Such a strategy would, however, be quite short-sighted and detrimental to workplace relations, wider social cohesion and indeed to long-term economic development.

In 2014, six years after recession hit the country, immigrants still account for 15 per cent of the Irish workforce, in spite of a recent increase in emigration among both Irish and non-Irish nationals. So far the incorporation of immigrants into Irish society has proved relatively free of friction; even during the recession Ireland has experienced no backlash against immigrants. To ensure that this remains the case and to prevent a segmentation of the labour market along ethnic lines, the integration of migrants in the workplace should be based on the principle of equal treatment and employment rights. It might be true that the 'beneficial constraints' (Streeck 1997) of labour market regulation become visible only in the long-term. However, more effective labour market compliance coupled with a greater investment in human capital offers a more sustainable path to recovery for Ireland than reliance on social dumping practices.

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All links were checked on 09.09.2014.

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The *ETUI Policy Brief* series is edited jointly by Jan Drahokoupil, Philippe Pochet, Aïda Ponce Del Castillo, Sotiria Theodoropoulou and Kurt Vandaele.

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The ETUI is financially supported by the European Union. The European Union is not responsible for any use made of the information contained in this publication.